

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TAMMY DECOSTA,) **CASE NO.: 1:19-cv-01584**
)
Plaintiff,)
)
vs.) **JUDGE:**
)
CUYAHOGA COUNTY, OHIO, et al.,)
)
Defendants.)

NOTICE OF REMOVAL

Defendants Cuyahoga County, Cuyahoga County Executive Armond Budish (“Budish”), Cuyahoga County Sheriff Clifford Pinkney (“Pinkney”), former Cuyahoga County Jail Warden Eric Ivey (“Ivey”), and former Regional Director of Corrections of Cuyahoga County Sheriff’s Department Ken Mills (“Mills”),¹ pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, seek removal of this action and state as follows:

1. On June 12, 2019, Plaintiff Tammy Decosta (“Plaintiff”) commenced a civil action against Cuyahoga County, Budish, Pinkney, Ivey, Mills, Medical Director Thomas Tallman, “John Doe/Jane Doe Corrections Officers,” “John Doe/Jane Doe Nurses,” and “John Doe Company” in the Cuyahoga County Common Pleas Court, with docket number CV-19-916707.

¹ All of the individual defendants, Budish, Pinkney, Ivey, and Mills, are sued only in their official capacities, *see Exhibit A, Compl.* ¶ 3, and are thus presently represented by the undersigned counsel only in their official capacities.

2. Pursuant to 28 U.S.C. § 1446(b)(2) all properly joined and served defendants² in this action have consented to the removal of this action from the Cuyahoga County Court of Common Pleas to this Court.³

3. Pursuant to 28 U.S.C. § 1446(a), the following documents from the state court are attached as exhibits to this Notice of Removal:

Exhibit A: Plaintiff's Complaint

Exhibit B: Summons issued to Cuyahoga County, and executed copy of summons

Exhibit C: Summons issued to Armond Budish, Cuyahoga County Executive, and executed copy of summons

Exhibit D: Summons issued to Clifford Pinkney, Cuyahoga County Sheriff, and executed copy of summons

Exhibit E: Summons issued to Eric J. Ivey, former Cuyahoga County Jail Warden, and executed copy of summons

Exhibit F: Summons issued to Ken Mills, former Regional Director of Corrections of Cuyahoga County Sheriffs Department on 6/13/19 and 6/19/19, and certified mail return receipt

Exhibit G: Summons issued to Thomas Tallman, Medical Director c/o Chief Legal Officer MetroHealth System, and FedEx proof-of-delivery

Exhibit H: Summons issued to John Doe/Jane Doe Corrections Officers on 6/13/19 and 6/19/19, and certified mail return receipt

Exhibit I: Summons issued to John Doe/Jane Doe Nurses on 6/13/19 and 6/19/19, and certified mail return receipt

² The “John Doe” and “Jane Doe” defendants are not properly joined or served in this action and thus their consent is not required for removal. *See, e.g., Williams v. Walmart's, President*, No. 1:18cv518, 2018 U.S. Dist. LEXIS 222152, at *3 n.2 (S.D. Ohio Sept. 21, 2018) (“Although the John-Doe defendants did not join in the Notice of Removal, ‘the general rule that all defendants must join in a notice of removal may be disregarded where, as here, the non-joining defendants are unknown.’” (quoting *Green v. America Online*, 318 F.3d 465, 470 (3d Cir. 2003)) (magistrate op.), adopted at *Williams v. Walmart's President*, No. 1:18-CV-00518, 2019 U.S. Dist. LEXIS 34996 (S.D. Ohio Mar. 5, 2019).

³ Marc Groedel, Esq., counsel for Dr. Thomas Tallman, has consented to removal of this action.

Exhibit J: Instructions for Service

Exhibit K: Letter to Clerk of Courts from Bernice Tucker

4. Plaintiff's Complaint includes the following federal law claims:

Count II: A claim brought under 42 U.S.C. § 1983 which alleges violations of the Eighth and Fourteenth Amendments to the United States Constitution against Defendants. (Exhibit A, Compl. pp. 16-18.)⁴

Count III: A claim brought under 42 U.S.C. § 1983 which alleges violations of the Fifth Amendment to the United States Constitution against Defendants. (Exhibit A, Compl. p. 18.)

Count IV: A claim brought under 42 U.S.C. § 1983 and *Monell v. Department of Social Services*, 436 U.S. 658 (1978) which alleges that the violations of Plaintiff's constitutional rights were caused by Defendants' failure to adequately train and supervise correctional and medical staff. (Exhibit A, Compl. pp. 19-20.)

5. This Court has original jurisdiction over the federal law claims in this civil action pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367. Accordingly, Plaintiff's Complaint is properly removable to this Court pursuant to 28 U.S.C. § 1441(a).

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of the earliest Defendants' receipt of the Summons and Complaint.

7. As required by 28 U.S.C. § 1446(d), Defendants will file a Notice of Filing Notice of Removal in the Cuyahoga County Court of Common Pleas Civil Division, case number CV-19-916707, promptly after filing this Notice of Removal.

⁴ Although Plaintiff's Complaint uses numbered paragraphs, there is an error in the paragraph numbering in Counts II, III, and IV, and so those counts are referred to by their page numbers for clarity.

8. In accordance with 28 U.S.C. § 1446(d), Defendants will provide prompt written notice to Plaintiff of the filing of this Notice of Removal.

Defendants respectfully request that this Notice effect removal of the above-captioned case from the Cuyahoga County Court of Common Pleas Civil Division to this Court.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting
Attorney for Cuyahoga County, Ohio

/s/ Kenneth Rock
KENNETH ROCK (0096482)
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
Tel: (216) 443-7825 Fax: (216) 443-7602
krock@prosecutor.cuyahogacounty.us

*Attorney for Defendants Cuyahoga
County, Cuyahoga County Executive Armond
Budish, Cuyahoga County Sheriff Clifford Pinkney,
Former Cuyahoga County Jail Warden Eric Ivey,
and Former Regional Director of Corrections of
Cuyahoga County Sheriff's Department Ken Mills*

CERTIFICATE OF SERVICE

I certify that on July 11, 2019 a copy of the foregoing *Notice of Removal* was filed with the Court's electronic filing system. In addition, I also certify that on July 11, 2019 I caused the foregoing *Notice of Removal* to be served via email on the following:

Michael P. O'Shea
Lipson O'Shea Legal Group
700 W. St. Clair Avenue, Suite 110
Cleveland, OH 44113
michael@lipsonoshea.com

Attorney for Plaintiff Tammy Decosta

Marc Groedel
Reminger
101 West Prospect Avenue
Suite 1400
Cleveland, Ohio 44115-1093
mgroedel@reminger.com

Attorneys for Defendant Thomas Tallman

/s/ Kenneth Rock

KENNETH ROCK (0096482)
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
Tel: (216) 443-7825 Fax: (216) 443-7602
krock@prosecutor.cuyahogacounty.us

*Attorney for Defendants Cuyahoga
County, Cuyahoga County Executive
Armond Budish, Cuyahoga County Sheriff
Clifford Pinkney, Former Cuyahoga County
Jail Warden Eric Ivey, and Former Regional
Director of Corrections of Cuyahoga
County Sheriff's Department Ken Mills*